IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

Crl.Rev.Pet.No. 4452 of 2007()

CC.467/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT, VADAKKANCHERY

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REVN. PETITIONER:

JAYAN, S/O. NARAYANAN, KUNNAMKULAM VILLAGE DESOM, TALAPPILLY TALUK, THRISSUR DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:

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1. KOUSALYA P.K., W/O. PRABHAKARAN, MELEPATTU HOUSE, KUMARANELLUR P.O., WADAKKANCHERY, THRISSUR DISTRICT.

2. THE STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA AT ERNAKULAM.

BY ADV. SRI. K.S. SIVAKUMARA, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 12/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR , J

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CRL.R.P. NO. 4452 of 2007

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Dated this the 12th day of December, 2007.

ORDER

The revision petitioner, who was the complainant in C.C.No. 467/2002 on the file of the Judicial First Class Magistrate, Wadakkancherry, challenges the failure on the part of the said Magistrate to try the accused for an offence punishable under Section 138 of the Negotiable Instruments Ac, 1881 after having taken cognizance of the said offence as well as one punishable under Section 420 IPC.

2. The case arises out of a private complaint filed by the petitioner alleging the commission of offences punishable under Sections 420 IPC and Section 138 of the Negotiable Instruments Act, 1881. Even though the learned Magistrate took cognizance of both the said offences during the progression of the trial, the court came to the conclusion that the offences which were really made out are those punishable under Section 420, 465, 467 and 471 IPC. Accordingly, the charge was altered and the accused

was charged for offences punishable under Sections 424, 465, 467 and 471 IPC. Evidently, with the alteration of the charge the offence punishable under Section 138 of the Negotiable Instruments Act was deleted from the charge. But, after trial the court came to the conclusion that offences with which the accused stood charged were not proved and accordingly acquitted the accused. An opportunity was, however, given to the revision petitioner to file a fresh complaint under Section 138 of the Negotiable Instruments Act.

3. Although the magistrate had initially taken cognizance of offences punishable under Sections 420 IPC and Section 138 of the Negotiable Instruments Act, subsequently the accused was charged only for offences punishable under Sections 420, 465, 467 and 471 IPC. As there was no charge for an offence punishable under Section 138 of the Negotiable Instruments Act and the accused did not stand trial for the said offence, even without any observation or opportunity granted by the court, the complainant would be entitled to prosecute the accused for the offence under Section 138 of the Negotiable Instruments Act

upon the acquittal of the accused of the offences punishable under Sections 420, 465, 467, and 471 IPC. The alteration of the charge does not have the effect of discharging or acquitting the accused of the offence punishable under Section 138 of the Negotiable Instruments Act since the accused did not stand charged for the said offences. This being the position, I see no ground to interfere with the judgment under revision. As rightly observed by the Magistrate, the acquittal of the accused for the IPC offences will not preclude a prosecution for the offence under Section 138 of the Negotiable Instruments Act.

The revision is accordingly dismissed.

V. RAMKUMAR, JUDGE.

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